

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

CC MEXICANO.US, LLC,

2:14-CV-108 JCM (NJK)

**Plaintiff(s),**

V.

AERO II AVIATION, INC., et al.,

Defendant(s).

## ORDER

15 Presently before the court is defendants' motion to dismiss pursuant to Federal Rules of Civil  
16 Procedure 12(b)(6) and 12(b)(2). (Doc. # 55). The plaintiff responded in opposition, (doc. # 58), and  
17 the defendants replied, (doc. # 62).

18 || I. Background

19        In June 2013, CC.Mexicano.US (hereinafter “plaintiff”) met George Blood and Stephen  
20 Crittenden (hereinafter “individual defendants”) of Aero II Aviation, Inc. (hereinafter “Aero II”) in  
21 Las Vegas, Nevada and negotiated a deal to finance the defendants’ purchase of an airplane. (Doc.  
22 # 58). At the meeting, the parties formed a loan agreement in which the plaintiff would finance the  
23 purchase of the aircraft. *Id.* The instant case focuses on the alleged failure of the defendants to fulfill  
24 their obligations arising from the loan.

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1     **II.     Legal Standard**2         **A.     FRCP 12(b)(2) Personal Jurisdiction**

3             Nevada has authorized its courts to exercise jurisdiction over persons “on any basis not  
 4     inconsistent with . . . the Constitution of the United States.” Nev. Rev. Stat. § 14.065. Thus, the due  
 5     process clause of the Fourteenth Amendment is the relevant constraint on Nevada’s authority to bind  
 6     a nonresident defendant to a judgment of its courts. *World–Wide Volkswagen Corp. v. Woodson*, 444  
 7     U.S. 286, 291 (1980). In order to exercise jurisdiction, the nonresident must have “certain minimum  
 8     contacts . . . such that the maintenance of the suit does not offend ‘traditional notions of fair play and  
 9     substantial justice.’” *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quoting  
 10    *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). The inquiry as to whether a forum state may assert  
 11    specific jurisdiction over a nonresident defendant “focuses on ‘the relationship among the defendant,  
 12    the forum, and the litigation.’” *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 775 (1984) (quoting  
 13    *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977)).

14             First, the contacts must arise out of relationships that the “defendant himself” created with  
 15    the forum state. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985). The “minimum  
 16    contacts” inquiry is defendant-focused and is not satisfied by demonstrating contacts between the  
 17    plaintiff (or third parties) and the forum state. *See Helicopteros Nacionales de Colombia, S.A. v.*  
 18    *Hall*, 466 U.S. 408, 417 (1984) (“[The] unilateral activity of another party or a third person is not  
 19    an appropriate consideration when determining whether a defendant has sufficient contacts with a  
 20    forum [s]tate to justify an assertion of jurisdiction.”). No matter how significant the plaintiff’s  
 21    contacts with the forum may be, those contacts cannot determine whether the defendant’s due  
 22    process rights are violated. *Walden v. Fiore*, 134 S. Ct. 1115, 1121-23 (2014); *Rush v. Savchuk*, 444  
 23    U.S. 320, 332 (1980).

24             Second, the defendant must have “minimum contacts” with the forum state itself, rather than  
 25    mere contacts with persons who reside there. *See Burger King*, 471 U.S. at 478 (“If the question is  
 26    whether an individual’s contract with an out-of-state party alone can automatically establish  
 27    sufficient minimum contacts in the other party’s home forum, we believe the answer clearly is that

1 it cannot"); *Kulko v. Superior Court of Cal., City and Cnty. of San Francisco*, 436 U.S. 84, 93 (1978)  
 2 (declining to "find personal jurisdiction in a state . . . merely because [the plaintiff in a child support  
 3 action] was residing there"). The defendant's contacts with the forum state may be intertwined with  
 4 his transactions or interactions with the plaintiff or other parties, but a defendant's relationship with  
 5 a plaintiff or third party, standing alone, is an insufficient basis for jurisdiction. *See Rush*, 444 U.S.  
 6 at 332.

7 Accordingly, the exercise of personal jurisdiction requires that the defendant has purposefully  
 8 "reach[ed] out beyond" its state and into another. *See, e.g., Burger King*, 471 U.S. at 479–480  
 9 (holding that court may exercise jurisdiction when defendant entered a contractual relationship that  
 10 "envisioned continuing and wide-reaching contacts"); *Keeton*, 465 U.S. at 781 (holding that court  
 11 may exercise jurisdiction when defendant circulated magazines to "deliberately exploit[]" a market  
 12 in the forum state). However, although physical presence in the forum is not a prerequisite to  
 13 jurisdiction, physical entry into the state—either by the defendant in person or through an agent,  
 14 goods, mail, or some other means—is certainly a relevant contact. *See, e.g., Burger King*, 471 U.S.  
 15 at 476; *Keeton*, 465 U.S. at 773–774.

16 The Ninth Circuit has established a three-prong test for analyzing specific personal  
 17 jurisdiction:

18 (1) The non-resident defendant must purposefully direct his activities or consummate  
 19 some transaction with the forum or resident thereof; or perform some act by which  
 20 he purposefully avails himself of the privilege of conducting activities in the forum,  
 21 thereby invoking the benefits and protections of its laws; (2) the claim must be one  
 22 which arises out of or relates to the defendant's forum-related activities; and (3) the  
 23 exercise of jurisdiction must comport with fair play and substantial justice, i.e., it  
 24 must be reasonable.

25 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004). "The plaintiff bears  
 26 the burden of satisfying the first two prongs of the test. If the plaintiff fails to satisfy either of these  
 27 prongs, personal jurisdiction is not established in the forum state." *Id.* (internal citations omitted).

28 "The purposeful availment prong of the minimum contacts test requires a qualitative  
 29 evaluation of the defendant's contact with the forum state, in order to determine whether [the  
 30 defendant's] conduct and connection with the forum State are such that [the defendant] should

1 reasonably anticipate being haled into court there.” *Harris Rutsky & Co. Ins. Servs., Inc. v. Bell &*  
 2 *Clements Ltd.*, 328 F.3d 1122, 1130 (9th Cir. 2003) (internal quotations omitted).

3 **B. FRCP 12(b)(6) Failure to State a Claim**

4 A court may dismiss a plaintiff’s complaint for “failure to state a claim upon which relief can  
 5 be granted.” Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide “[a] short and plain  
 6 statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2); *Bell*  
 7 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does not require detailed factual  
 8 allegations, it demands “more than labels and conclusions” or a “formulaic recitation of the elements  
 9 of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted).

10 “Factual allegations must be enough to rise above the speculative level.” *Twombly*, 550 U.S.  
 11 at 555. Thus, to survive a motion to dismiss, a complaint must contain sufficient factual matter to  
 12 “state a claim to relief that is plausible on its face.” *Iqbal*, 556 U.S. at 678 (citation omitted).

13 In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to apply when  
 14 considering motions to dismiss. First, the court must accept as true all well-pled factual allegations  
 15 in the complaint; however, legal conclusions are not entitled to the assumption of truth. *Id.* at 1950.  
 16 Mere recitals of the elements of a cause of action, supported only by conclusory statements, do not  
 17 suffice. *Id.* at 1949.

18 Second, the court must consider whether the factual allegations in the complaint allege a  
 19 plausible claim for relief. *Id.* at 1950. A claim is facially plausible when the plaintiff’s complaint  
 20 alleges facts that allow the court to draw a reasonable inference that the defendant is liable for the  
 21 alleged misconduct. *Id.* at 1949.

22 Where the complaint does not permit the court to infer more than the mere possibility of  
 23 misconduct, the complaint has “alleged – but not shown – that the pleader is entitled to relief.” *Id.*  
 24 (internal quotations omitted). When the allegations in a complaint have not crossed the line from  
 25 conceivable to plausible, plaintiff’s claim must be dismissed. *Twombly*, 550 U.S. at 570.

26 The Ninth Circuit addressed post-*Iqbal* pleading standards in *Starr v. Baca*, 652 F.3d 1202,  
 27 1216 (9th Cir. 2011). The *Starr* court stated, “First, to be entitled to the presumption of truth,

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1 allegations in a complaint or counterclaim may not simply recite the elements of a cause of action,  
 2 but must contain sufficient allegations of underlying facts to give fair notice and to enable the  
 3 opposing party to defend itself effectively. Second, the factual allegations that are taken as true must  
 4 plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to  
 5 be subjected to the expense of discovery and continued litigation.” *Id.*

6 **III. Discussion**

7 **A. 12(b)(2) Personal Jurisdiction**

8 In the instant case the defendants are clearly subject to the personal jurisdiction of the court.  
 9 The defendants cite the Supreme Court’s recent decision in *Walden v. Fiore*, arguing that the  
 10 defendants’ contacts are with the plaintiff, rather than the forum state. However, contrary to the  
 11 defendants’ claims, this is more than a mere contractual relationship with a party who happens to live  
 12 in Nevada. The defendants knowingly requested a meeting with a Nevada company and negotiated  
 13 the agreement at the center of this dispute in Nevada. Additionally, the agreement specifically  
 14 provides that disputes be governed by Nevada law. Therefore Aero II and the individual defendants  
 15 “could reasonably anticipate being haled into court” in Nevada.

16 **B. 12(b)(6) Failure to State a Claim**

17 The plaintiff alleges Aero II is a mere alter ego of the individual defendants, and although  
 18 the defendants argue the complaint contains inadequate factual allegations, they are sufficient to  
 19 create a plausible claim and proceed to discovery. (See doc. # 47, para. 12–15) (alleging: (1) upon  
 20 “information[] and belie[f] . . . [that there is] unity of interest and ownership;” (2) “[defendant Aero  
 21 II is a] mere alter ego, . . . mere shell instrumentality and conduit;” (3) “individuality or separateness  
 22 does not . . . exist;” (4) “[d]efendants . . . acted as each other’s agents and in concert with one  
 23 another;” (5) “[a]dherence to the fiction of separate existence . . . [d]efendants would sanction a  
 24 fraud and promote injustice”). If there is evidence supporting this claim, it is within the defendants’  
 25 exclusive dominion. Discovery will determine the validity of this claim.

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1     **IV. Conclusion**

2         In the instant case, the court has properly exercised jurisdiction over the defendants. By  
3 physically coming into the state and negotiating the contract at the center of this dispute, the  
4 defendants have purposefully availed themselves to the state of Nevada. Additionally the court finds  
5 that exercising personal jurisdiction comports with notions of fair play and substantial justice.

6         Furthermore, the plaintiff has provided sufficient factual allegations to support its alter ego  
7 theory of recovery against the individual defendants.

8             Accordingly,

9         IT IS HEREBY ORDERED, ADJUDGED, and DECREED that the defendants' motion to  
10 dismiss (doc. # 55) be, and the same hereby is, DENIED.

11             DATED July 31, 2014.

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**UNITED STATES DISTRICT JUDGE**

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